



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(RESEARCH, DEVELOPMENT AND ACQUISITION)
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

DEC 29 2009

MEMORANDUM FOR DISTRIBUTION

Subject: Internal Controls for Procurements on Behalf of the Department of Defense
by Certain Non-Defense Agencies

Section 801(b) of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181, requires that a DoD activity may place an order, make a purchase, or otherwise procure property or services through a non-Defense agency only if the non-Defense agency certifies that it "...will comply with Defense procurement requirements for the fiscal year." Absent certification, Section 801(b) authorizes the Under Secretary of Defense for Acquisition, Technology and Logistics to waive the limitation of Section 801(b) for procurements determined "...necessary in the interest of the Department of Defense to procure property and services through the non-defense agency during such fiscal year." USD(AT&L) has delegated this authority to the Director, Defense Procurement and Acquisition Policy (DPAP). The Director, DPAP, maintains a listing of non-Defense agencies certifying compliance with Defense procurement requirements at www.acq.osd.mil/dpap/cpic/cp/interagency_acquisition.html.

The Director, DPAP, memorandum of September 18, 2009 (attached) identifies the information to be included in each request for a Section 801(b) waiver. DoN Section 801(b) waiver requests shall be submitted via the Deputy Assistant Secretary of the Navy for Acquisition & Logistics Management. Request submissions must be made with sufficient lead time for review and processing at both DoN Secretariat and OSD levels.

The Department of Energy (DoE) provided a Section 801(b) certification for Fiscal Year 2010, but the certification is not compliant with statutory requirements. Recognizing DoD's needs to continue to procure goods and services through DoE, the Director, DPAP, executed the attached determination authorizing DoD components to utilize the assisted acquisition services of DoE for acquisition of essential mission related requirements through March 31, 2010. Each DoN activity using the assisted acquisition services of DoE is required to provide monthly obligation reports for consolidation and submission to DPAP. Obligation reports must be submitted within 5 days of the end of each month and include the information identified in the DoN Section 801(b) Reporting Format attached. In addition, supporting documentation for the acquisition must be readily available for review or audit by the Department of Defense Inspector General.

Subject: Internal Controls for Procurements on Behalf of the Department of Defense
by Certain Non-Defense Agencies

Requests for Section 801(b) waiver and obligation reports shall be submitted to
Ms. Robbin Bruce at Robbin.Bruce@Navy.Mil. Ms. Bruce can be reached at 703-693-
3998.



David F. Baucom
RDML, SC, USN
DASN(A&LM)

Attachments:
As stated

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Distribution (Continued Page 3)

SUBJECT: Internal Controls for Procurements on Behalf of the Department of
Defense by Certain Non-Defense Agencies

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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

SEP 18 2009

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF
DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, COST ASSESSMENT AND PROGRAM
EVALUATION
DIRECTOR, NET ASSESSMENT
DIRECTOR OF THE DEFENSE AGENCIES
DIRECTOR OF THE DOD FIELD ACTIVITIES

SUBJECT: National Defense Authorization Act for Fiscal Year 2008 (Pub. Law No. 110-181), Section 801, *Internal Controls for Procurements on Behalf of the Department of Defense by Certain Non-Defense Agencies, Requests for "Waiver"*


Section 801(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008 authorizes an acquisition official of the Department of Defense to place an order, make a purchase, or otherwise procure property or services for DoD in excess of the simplified acquisition threshold through a non-defense agency **only if** the non-defense agency can certify that it "will comply with defense procurement requirements for the fiscal year." Absent certification, Section 801(b) authorizes the Under Secretary of Defense for Acquisition, Technology, and Logistics to waive the limitation of Section 801(b) for any category of procurements provided "it is necessary in the interest of the Department of Defense to procure property and services through the non-defense agency." Otherwise, DoD Components may not procure property or services in excess of the simplified acquisition threshold through the non-certifying, non-defense agency. Recently USD(AT&L) delegated authority (memo attached) to waive the limitation of Section 801(b) to the Director, Defense Procurement and Acquisition Policy.

To ensure minimal impact to current operations and to comply with Section 801(b), the following procedures are established to request the Director, Defense Procurement and Acquisition Policy approval of a Section 801(b) "waiver". DoD Components are requested to establish a single focal point within your organization to

review each request. Requests must be submitted to the Director, Defense Procurement and Acquisition Policy through your focal point with sufficient lead time for review and processing. The following information must be included in your request:

1. A description of the categories of procurements covered by the request. If the request is for an individual procurement a description of the individual procurement is required.
2. An assessment of why the category of the procurement or the individual request is "necessary in the interest of the Department" to obtain through the non-defense agency that has not certified compliance with Section 801(b).
3. Confirmation that all the affected contracts and supporting documents are on file and available for review or audit by the Department of Defense Inspectors General.
4. A statement by the senior acquisition executive, or senior procurement executive of your agency confirming that your agency has completed a thorough review of all applicable contracts and supporting documents and has determined it is "necessary in the interest of the Department of Defense to procure property and services through the non-defense agency." The statement should also identify the fiscal year(s) of the requirement.

My point of contact is Mr. Michael Canales, 703-695-8571, or at Michael.Canales@osd.mil



Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

cc:
Under Secretary of Defense for Acquisition, Technology, and Logistics



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

THE UNDER SECRETARY OF DEFENSE
3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

JUL 19 2009

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Delegation of Authority Under Section 801 of the National Defense Authorization Act for Fiscal Year 2008

Subsection (b)(1) of section 801 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181, "Internal Controls for Procurements on Behalf of the Department of Defense by Certain Non-Defense Agencies," states that "an acquisition official of the Department of Defense may place an order, make a purchase, or otherwise procure property or services for the Department of Defense in excess of the simplified acquisition threshold through a non-defense agency only if in the case of a procurement by any non-defense agency in any fiscal year, the head of the non-defense agency has certified that the agency will comply with defense procurement requirements for the fiscal year".

For the purposes of this section, a non-defense agency is compliant with defense procurement requirements if the procurement policies, procedures, and internal controls of the non-defense agency applicable to the procurement of products and services on behalf of the Department of Defense and the manner in which they are administered, are adequate to ensure the compliance of the non-defense agency with the requirements of laws and regulations (including applicable Department of Defense financial management regulations) that apply to procurements of property and services made directly by the Department of Defense. A procurement shall be treated as being made during a particular fiscal year to the extent that funds are obligated by the Department of Defense for the procurement in that fiscal year.

Subsection (b)(2) of section 801 authorizes the Under Secretary of Defense for Acquisition, Technology, and Logistics to make exceptions to the limitations imposed on a non-defense agency if determined, in writing, that "it is necessary in the interest of the Department of Defense to continue to procure property and services through the non-defense agency during such fiscal year".

I hereby delegate to the Director, Defense Procurement and Acquisition Policy, the authority to make such determinations and the authority to extend the period for which any determination is in effect. This delegation of authority is effective until September 30, 2010, unless rescinded earlier.

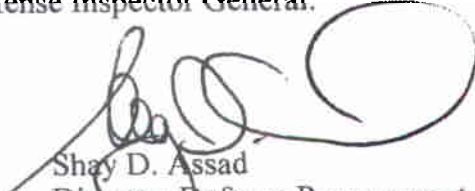
Ashton B. Carter

SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
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NOV 23 2009

Determination in Accordance with Section 801 of the National Defense Authorization Act for Fiscal Year 2008 (NDAA 2008) by the Under Secretary of Defense for Acquisition, Technology, and Logistics [USD(AT&L)] as Delegated to the Director, Defense Procurement and Acquisition Policy, to Continue to Procure Property and Services Through the Department of Energy (DoE) in support of Department of Defense (DoD) components.

- Public Law 110-181, section 801, "Internal Controls for Procurements on Behalf of the Department of Defense by Certain Non-Defense Agencies," at subsection (b)(1) allows an acquisition official of the Department of Defense to place an order, make a purchase, or otherwise procure property or services for the Department of Defense in excess of the simplified acquisition threshold (typically \$100,000) through a non-defense agency only if the head of the non-defense agency has certified that the agency will comply with defense procurement requirements for the fiscal year.
- The Department of Defense Inspector General (DoDIG) recently expressed concerns regarding the Department of Energy (DoE) procedures when contracting on behalf of the DoD. DoE provided information in response to DoDIG concerns and is cooperating with the on-going audit. Although DoE has provided DoD a certification for FY 2010, in accordance with the requirements of section 801 (b)(1) of the NDAA 2008, it is my determination that the certification is not fully compliant with statutory requirements. Notwithstanding, the Department needs to continue to procure supplies and services through DoE. Therefore, pending a final written audit recommendation from the DoD Inspector General, it is my determination that it is necessary and in the interest of the DoD to continue to procure property and services through the DoE. I authorize all DoD components to utilize the assisted acquisition services of the DoE for the procurement of essential mission related requirements.
- This determination covers DoD requirements in fiscal year 2010 to be placed through March 31, 2010 up to a total amount of \$900 million. Each component utilizing the assisted acquisition services of DoE is directed to maintain sufficient tracking records toward the authorized ceiling and to provide monthly obligation reports to the Deputy Director, Defense Procurement and Acquisition Policy, Contract Policy and International Contracting. In addition, each component is required to ensure that all affected Department of Defense contract files are documented and available for review or audit by the Department of Defense Inspector General.


Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

DoN Section 801(b) Report Format

Activity Reporting: _____

Activity POC: Name: _____

E-Mail: _____

Phone: _____

Assisting Agency: _____

Supply/Service Acquired: _____

Total Dollar Value: _____

Monthly Obligation: _____

Period of Performance: _____

Rationale for Use of Non-Section 801 Compliant Assisting Agency:
